IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2704 OF 2004

Kishanlal Kharbanda ... Petitioner

Vs.

The Collector of Mumbai and Ors. ... Respondents

Mr. A.Y. Sakhare, Senior Counsel i/by Varsha Palav for Petitioner.

Mr. G.W. Mattos, A.G.P. for State.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

P.C.

1. Rule. By consent heard forthwith.

2. The Petitioner by the present petition has prayed for various reliefs against Respondent whereby they have sought to direct Respondent to withdraw the demands dated 28.8.2001 and 1.9.2004 and for the consequential reliefs as set out therein. Earlier by Notice dated 20.8.2001, demand was made on the Petitioner in the sum of Rs.36,54,124/-. Against that order, Petitioner preferred an appeal. The appellate Authority by its order dated 30.6.2004 was partly pleased to allow the appeal. The Appellate Authority noted the contention of the Petitioner herein that between the period of 27.3.1998 and 13.2.1986 the premises were in the possession of the Court Receiver and as such licence fees and legal fees may not be recovered from the Petitioner herein for

that period, if established. Except for that period, the permission was granted to recover amount as applicable. Subsequent to this the Respondent No. 1 has made fresh demand on the Petitioners by demand dated 1.9.2004 in the total sum of Rs.61,57,201.92.

3. On behalf of the Petitioner, their learned counsel contends that by letter dated 21.9.2004 the first respondent while calculating the amount dues excluded the period of 23.7.1972 to 12.2.1986, but, yet has claimed demand in the sum of Rs.61,57,201.92. Learned counsel points out that earlier demand was based on the instruction of the Government for holding licence fees for unauthorised use in terms as set out in the demand dated 20.8.2001. That amount included the period of 23.7.1972 to 12.3.1986. That amount included both principal as well as interest. However, it was much lesser than the amount claimed by demand on 1.9.2004. It is therefore, submitted that this amount discloses total non application of mind. It is then submitted that the provisions of the Maharashtra Land Revenue Code and Rules framed therein provide for licence fees for occupation of Government Land. Once that be the case, the Government could not have issued directions contrary to the Act and rules. The Respondent No. 1 as a quasi judicial authority was bound to follow

the provisions under the Act and rules unless it was open to the Government under the provisions of the Act and rules to issue any directions which are of binding character on Respondent No. 1. Reference is placed on the judgement in the case of M/s. West Coast Builders Pvt. Ltd. and another Vs. The Collector of Bombay and Others 1995(4) Bom.C.R. 200. it is not necessary for this court to decide that controversy as it will be open to the petitioners to raise all such pleas available to him before the first Respondent.

. It is also contended on behalf of the Petitioners that by letter of 21.9.2004, in Item Nos. 1 to 3 they had sought information to charge of licence fees for the establishments as set out for the period of 1974 to 1994. That information was sought under the right to Public Information Act. That information has not been made available to the Petitioners herein. Considering the right of the Petitioner to the said information, Respondent No. 1 be directed to make available the said information before the petitioner is called upon for the hearing in the matter so that the petitioner will be in a position to advance his arguments based on amounts charged to the other establishments.

4. Considering the above contention, the following

order :

. Respondents are directed not to act on the demand notices dated 20.8.2001 and 1.9.2004. The matter is remanded back to the first respondent to decide the matter afresh after giving opportunity to the Petitioners and if liberty is sought considering the liability involved to be heard by counsel, to also give liberty to the counsel to advance his arguments and thereafter proceed to dispose of the matter taking into consideration what has been set out in the earlier part of this order.

. The Respondent Collector to dispose of the matter within the period of 12 weeks of giving the information applied for which information will be given within four weeks from today.

. All contentions of both Petitioners and Respondents are left open.

. Rule made absolute accordingly. No order as to costs.

. All parties to act on the authenticated copy of this order issued by Personal Secretary.

(F.I. REBELLO,J.)